

Caps on Special Education Private Provider Tuition

By: Marybeth Sullivan, Senior Legislative Attorney
January 30, 2020 | 2020-R-0044

Issue

In other states, are there caps on how much private placement special education programs can charge a school district for tuition?

Summary

Yes; at least three states (Maine, New Jersey, and Vermont) establish parameters for tuition rates that private special education providers may charge school districts. Each of these states have laws that grant their education commissioner or secretary the authority to establish maximum rates or approve rates. Of these three states, New Jersey has the most prescriptive agency regulations affecting private providers' rates.

States With Private Provider Tuition Parameters

Maine

Maine law imposes tuition rate parameters on private entities that operate facilities exclusively for children with disabilities. However, these parameters as described below only apply to special education programs provided by facilities where the state pays, reimburses, or otherwise funds tuition, in whole or in part.

State law requires these entities to do the following, among other things, when calculating tuition rates:

1. receive approval from the education commissioner for all rates;
2. establish rates that do not exceed the actual per student operating cost incurred in the preceding school year; and
3. limit annual tuition rate increases to the tuition rate established through negotiation unless they can present to the commissioner evidence that the excess is necessary to avoid hardship.

Additionally, Maine requires the commissioner to establish a tuition rate for new special education programs in special purpose private schools. This rate must be based on the estimated allowable costs of these schools ([Me. Rev. Stat. Ann. tit. 20-A, § 7302](#)).

New Jersey

New Jersey law prohibits State Department of Education-approved private schools for students with disabilities (APSSDs) from charging a tuition rate to sending districts that is greater than the actual per pupil cost. This cost is determined by rules established by the education commissioner and approved by the State Board of Education ([N.J. Stat. Ann. § 18A:46-21](#)).

These rules, as outlined in state regulations, require in-state APSSD boards of directors to determine the final tuition rate to be charged. The rate must be less than or equal to the certified actual cost per student, as determined by an independent school auditor. The board must ensure that the program's actual allowable costs are:

1. based on all required student instruction costs from July 1 through June 30;
2. consistent with students' individualized education programs (IEPs);
3. inclusive of all costs for implementing all students' IEPs and related services (except for any related services outside the scope of services under the district/APSSD tuition contract);
4. ordinary, necessary, and reasonably incurred; and
5. based on goods received and services rendered in the fiscal year.

Additionally, the regulations establish a ceiling for the portion of program costs that are administrative and a floor for costs that are instructional. These costs apply to six specified school years, ranging from 2016-17 to 2021-22. For example, for the 2019-20 school year, the rule establishes minimum instructional costs of 56.5% and maximum administrative costs of 23.5%.

Under the regulations, an APSSD charges one tentative tuition rate as published by the department and one final tuition rate determined by the APSSD, and it calculates one certified actual cost per

student for the school year that the education commissioner must approve ([N.J. Admin. Code § 6A:23A-18.3\(a\)](#)).

(An example of the above annual department publication is this [December 2019 memo](#), which describes [tentative APSSD tuition rates for the upcoming school year](#), as well as independent [auditor-certified rates for the previous school year](#).)

Additionally, the state regulations establish parameters for APSSDs to, among other things, (1) increase tuition rates beyond the tentative rates predicted; (2) charge location-based tuition rates for separate schools; (3) record direct and indirect costs incurred by their special education programs; (4) establish tentative tuition rates through written agreements with sending boards of education; and (5) adhere to maximum staff salary rates as established by a commissioner-published list ([N.J. Admin. Code § 6A:23A-18.3\(b\)-\(u\)](#)).

Vermont

Vermont law requires the education secretary to consult with in-state independent schools to set the maximum rates that school districts and the Vermont Agency of Education must pay for tuition, room, and board, based on the level of services received by students receiving special education ([16 Vt. Stat. Ann. § 2973\(a\)](#), effective through June 30, 2022). However, this requirement is not limited to private schools that exclusively provide special education services.

Beginning July 1, 2022, the law makes such a distinction. It requires the education secretary to set maximum tuition rates for school districts or the agency to pay private schools that enroll only students with IEPs or 504 plans who attend under a written agreement between the school district and the private school. Once the secretary sets a rate, the school cannot exceed it until the secretary approves a new rate. The law caps the rate at the costs reasonably related to the service levels provided by the school. It allows the secretary to determine the relationship between costs and level of services ([16 Vt. Stat. Ann. § 2973\(b\)\(2\)\(C\)](#), beginning July 1, 2022).

Vermont state regulations also establish an oversight process that requires the education commissioner (presumably, the education secretary) to review the annual rate reports of each special education-approved independent school. The commissioner must determine whether the rates are reasonably related to the level of services provided to publicly-placed children who need special education services. The regulations outline (1) steps the commissioner must take to address rates that he or she determines to be unreasonable and (2) the formal proceeding that the State Board of Education must conduct if the school in question cannot justify its rates ([22-004 Vt. Code R. § 2228.8](#)).

Hyperlinks

New Jersey State Department of Education Memo:

<https://www.nj.gov/education/finance/fp/TuitionMemo.pdf>. December 19, 2019.

New Jersey State Department of Education, Tentative Per Diem Rates for 2020-21:

<https://www.nj.gov/education/finance/fp/2020-2021ExhibitA.pdf>. January 23, 2020.

New Jersey State Department of Education, Independent Auditor Certified Tuition Rates and

Adjustments for 2018-19: <https://www.nj.gov/education/finance/fp/2020-21ExhibitB.pdf>. January 23, 2020.

MS:kc